

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	NO. 99-781-2
	:	
MATTHEW ZIMMERMAN	:	

**MEMORANDUM AND ORDER**

YOHN, J. June , 2001

On May 30, 2000, the defendant, Matthew Zimmerman, was convicted of conspiring to distribute a kilogram of cocaine and related charges. The evidence consisted of, *inter alia*, the testimony of a cooperating witness, Roberto Sanchez, who participated with Zimmerman in the cocaine transaction; the testimony of a confidential source, Yancy Laureano, who, at Drug Enforcement Administration (“DEA”) agents’ instruction, posed as the buyer of a kilogram of cocaine to be obtained from defendant Hector Resto by Zimmerman; tape-recorded conversations in which Zimmerman agreed to sell a kilogram of cocaine to the DEA confidential source; DEA surveillance that observed Zimmerman meet with the cocaine supplier, Resto, at Resto’s home and business; Zimmerman’s flight when confronted by DEA agents; and Zimmerman’s own trial testimony.

In the instant motion, Zimmerman claims that portions of two DEA reports of interviews with Wilson Rodriguez that were turned over to his attorney after his trial contain exculpatory information that would have bolstered his entrapment defense and altered the outcome of trial.

Because I find that the information contained in these reports is not material under *Brady v. Maryland*, 373 U.S. 83 (1963), I conclude that there had been no violation of that doctrine. Therefore, the defendant's motion for a new trial will be denied.

## **I. Background**

The evidence at trial showed that, between approximately mid-November and November 21, 1999, Zimmerman and co-defendants Robert Sanchez, Hector Resto, and Luis Colon, conspired to distribute a kilogram of cocaine to Yancy Laureano, a confidential source working under the supervision of the DEA. *See, e.g.*, 5/23/00 N.T. at 60-62; 5/24/00 N.T. at 102-03.<sup>1</sup>

On November 17, 1999, Laureano met Zimmerman, Sanchez, and Richard Knellinger inside a furniture store owned by Knellinger. Knellinger worked as a confidential source for the DEA, but did not testify at trial for either party. During the meeting Sanchez, with the agreement of Zimmerman, offered to sell Laureano a kilogram of cocaine, showed her approximately three ounces of cocaine in a plastic bag, and gave her a cocaine sample. *See Gov. Ex. 2A*; 5/24/00 N.T. at 104-05; 5/25/00 N.T. at 138-40. Sanchez testified that Zimmerman supplied the three ounces of cocaine and that Zimmerman told Sanchez that he bought it from Resto. *See* 5/23/00 N.T. at 72-73, 159. Sanchez and Zimmerman agreed to sell Laureano the kilogram of cocaine and page Laureano once they had obtained it from their supplier. *See Gov. Ex. 2A* at 5-6.

After Laureano left the furniture store, Zimmerman and Sanchez went to Resto's business, CSC Electronics, where Zimmerman and Resto met. Sanchez was present during part

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<sup>1</sup>Prior to trial Sanchez pleaded guilty to the indictment and agreed to cooperate with the government. *See Gov. Ex. 15*. Sanchez testified at trial. *See* 5/23/00 N.T. at 60-200.

of this meeting and testified that Zimmerman told him that Resto was on the telephone trying to obtain the kilogram of cocaine. *See* 5/23/00 N.T. at 78, 124. Zimmerman and Sanchez did not acquire the kilogram of cocaine from Resto at this time. *Id.* at 78.

On November 18, Laureano again went to the furniture store to meet with Zimmerman and Sanchez about the kilogram of cocaine. *See* 5/23/00 N.T. at 85-86; 5/24/00 N.T. at 110-11. When Laureano arrived, Sanchez was inside the furniture store and Zimmerman was waiting outside in his cream colored Nissan Maxima. *See* 5/23/00 at 85, 101-02; 5/25/00 at 119, 141. At one point during the meeting, Laureano went to Zimmerman's car to speak with him. *See* 5/25/00 at 119, 141. Zimmerman confirmed to Laureano what Sanchez had stated earlier, that Zimmerman's supplier would not give him the kilogram of cocaine without first seeing the purchase money. *See* Gov. Ex. 5A at 12-13; *see also id.* at 10-16. Ultimately, Laureano did not give Sanchez and Zimmerman any purchase money at this time. Instead, Laureano agreed with Sanchez and Zimmerman that they would pay her when they had the cocaine. *Id.* at 17.

Immediately after this meeting, Zimmerman and Sanchez drove to Resto's residence to get the kilogram of cocaine. *See* 5/23/00 N.T. at 103, 209; 5/25/00 N.T. at 121, 145-46; *see also* 5/25/00 N.T. at 122 (Zimmerman stating that he went to Resto's house to attempt to introduce Laureano to Resto so that she and Resto could conduct a cocaine transaction or to see if Resto "could help him [Sanchez]" obtain a kilogram of cocaine). Zimmerman went inside to meet with Resto and returned to the car with a kilogram of cocaine, obtained from Resto, that Zimmerman showed to Sanchez. *See* 5/23/00 N.T. at 104; 5/24/00 N.T. at 3.

Zimmerman and Sanchez next proceeded to the furniture store to complete the cocaine transaction. *See* 5/23/00 N.T. at 209-10; 5/25/00 N.T. at 122, 150. The transaction, however,

was not completed because Laureano was not there and Zimmerman and Sanchez could not find Laureano's telephone number to contact her. *See* 5/23/00 N.T. at 107. Zimmerman and Sanchez waited approximately fifteen minutes at the furniture store and then left to return the cocaine to Resto. *See* 5/23/00 N.T. at 108. While in route, Zimmerman and Sanchez were encountered by DEA Task Force Officer Scott Nowetner. *See* 5/23/00 N.T. at 108-09; 5/24/00 N.T. at 24-29. Zimmerman drove directly at the standing officer, struck him, and fled. *See* 5/24/00 N.T. at 29-31.

At trial, Zimmerman blamed his involvement in the above cocaine transaction on Knellinger. Specifically, Zimmerman argued that Knellinger, a DEA confidential source, had urged him to participate in a drug transaction with a woman Knellinger knew to be an undercover government source. Zimmerman testified that he knew Knellinger to be a drug dealer at the time of the transaction and that when Knellinger showed Zimmerman several iron burns on his body, Zimmerman took this to mean that he would suffer similar consequences if he failed to cooperate. *See* 5/25/00 N.T. at 111, 118-19.

At trial, Sanchez testified to the following regarding Knellinger: (1) that Sanchez knew Knellinger three or four years prior to November 2000 because Sanchez had been Knellinger's "bag man" in that Sanchez collected and counted money received during Knellinger's drug transactions and because Sanchez was an employee at Knellinger's furniture store; (2) that Sanchez had seen Knellinger sell about 75 kilograms of cocaine; (3) that on November 17, 2000, Sanchez met with Zimmerman and Knellinger to discuss the instant cocaine transaction, specifically, the price of the kilogram of cocaine (\$31,000) which was set by Knellinger, where the deal would occur (at Knellinger's furniture store), and to whom they would be selling the

cocaine (Laureano); (4) that on November 18, 2000, at Knellinger's furniture store, Knellinger introduced Laureano to Sanchez and Zimmerman as a friend who desired to purchase a kilogram of cocaine; (5) that Knellinger gave Sanchez Laureano's pager number and told Sanchez to write it down; and (6) that Knellinger was to pay Sanchez \$500 after the transaction was completed for Sanchez's participation. *See* 5/23/00 N.T. at 70-72, 132, 145, 150; Gov. Ex. 2a at 5. Much, if not all, of this information is also contained in the DEA 6 report of interview with Sanchez, that the prosecution provided to the defense before trial.

Ultimately, the jury found Zimmerman guilty of conspiring to distribute a kilogram of cocaine, possession of a kilogram of cocaine with intent to distribute, and possession of a kilogram of cocaine with intent to distribute within 1,000 of a school. The jury acquitted Zimmerman of attempting to murder a federal officer and could not reach a decision on the charge of assaulting a federal officer. The jury was unable to reach a unanimous verdict as to Resto and Colon, resulting in a mistrial. On the day of the retrial, both Resto and Colon entered pleas of guilty.

## **II. Standard of Review**

Zimmerman requests that the court grant him a new trial under Federal Rule of Criminal Procedure 33. Pursuant to Rule 33, "[o]n a defendant's motion, the court may grant a new trial to that defendant if the interests of justice so require." *See* Fed. R. Crim. P. 33; *see also United States v. Bevans*, 728 F. Supp. 340, 343 (E.D. Pa.) ("[The court] may set aside the verdict and order a new trial if it is ascertained that the verdict constitutes a miscarriage of justice."), *aff'd*, 914 F.2d 244 (3d Cir. 1990). "The decision whether to grant a motion for a new trial under Rule 33 is committed to the sound discretion of the trial court, which may set aside the verdict and

order a new trial if it ascertains that the verdict constitutes a miscarriage of justice." *United States v. Daniels*, No. 95-CR-369, 1996 WL 311444, at \*4 (E.D. Pa. June 6, 1996) (citing *United States v. Martorano*, 596 F. Supp. 621, 624 (E.D. Pa. 1984), *aff'd*, 767 F.2d 63 (3d Cir.), *cert. denied*, 474 U.S. 949 (1985)). One reason a new trial may be granted is if the conviction is against the weight of the evidence. See *United States v. Clemons*, 658 F. Supp. 1116, 1119 (W.D. Pa. 1987) (citing *Tibbs v. Florida*, 457 U.S. 31, 37-39 n.11-12 (1981)), *aff'd*, 843 F.2d 741 (3d Cir. 1988).

### **III. Discussion**

Zimmerman claims that portions of two DEA reports of interviews with Wilson Rodriguez that were turned over to his attorney after his trial contain exculpatory information that would have bolstered his entrapment defense and altered the outcome of trial. Specifically, defendant submits that his entrapment argument was that Knellinger had urged him to participate in a drug sale with a woman whom Knellinger knew to be an undercover agent. Moreover, defendant submits that in the interviews, Rodriguez provided the following information that is both exculpatory and material to this defense: (1) that Sanchez told Rodriguez not to talk to the police because "this case was getting too big"; (2) that Rodriguez supplied quantities of one to four kilograms of cocaine to Knellinger each week for approximately three years; (3) that Rodriguez observed Knellinger meeting with a white male at Knellinger's furniture store who drove a cream colored Nissan Maxima and that, after the white male left the store, Knellinger told him that the male had a kilogram of cocaine on him; (4) that Rodriguez acted as the middleman between his employer Juan and Knellinger on about ten deliveries of cocaine; and (5) that Rodriguez was working in Knellinger's store the night Sanchez was arrested. As such,

defendant argues that the government's failure to disclose these interview reports prior to trial violates the due process dictates of *Brady* and necessitates that the court grant him a new trial.

Conversely, the government argues that because the information contained in these two reports is neither material nor exculpatory, no *Brady* violation occurred. The government adds that, in any event, the prosecution did not violate any *Brady* obligations because it disclosed to Zimmerman in a DEA report summarizing a debriefing of Sanchez that DEA agents had information that Knellinger was a large-scale cocaine dealer. Moreover, because the information contained in the Rodriguez reports is cumulative, it is not material and does not undermine confidence in the jury's guilty verdict.

In *Brady*, the Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution." *Brady v. Maryland*, 373 U.S. 83, 87 (1963). "There are three components of a true *Brady* violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999). This prejudice requirement, whether there exists a "reasonable probability that the suppressed evidence would have produced a different verdict," *id.* at 281, is also expressed in terms of the *Brady* materiality inquiry. *See, e.g., Kyles v. Whitley*, 514 U.S. 419, 435 (1995) (evidence is material under *Brady* if "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict."). Thus, "[t]he question is not whether the defendant would more likely than not have received a different

verdict with the evidence, but whether in its absence he received a fair trial.” *Id.* at 434.

I find that even if the statements in the Rodriguez reports are arguably exculpatory, they are not material.<sup>2</sup> As a result, there is no *Brady* violation. The two reports essentially disclose that Rodriguez supplied kilograms of cocaine to Knellinger for other transactions and that Sanchez was involved in Knellinger’s cocaine dealings. Not only was this evidence undisputed at trial, it does not tend to show that Zimmerman did not agree to sell a kilogram of cocaine to Laureano, or in terms of the defendant’s entrapment defense, that he was any less predisposed to do so. In fact, there is nothing in the Rodriguez reports that relates to the issue of Zimmerman’s predisposition to commit the crime or any inducements by Knellinger to urge the defendant to commit the crime. As such, because nothing in the Rodriguez reports tends to undermine confidence in the jury’s verdict, the statements are not material under *Brady* and its progeny.

Zimmerman claims that Rodriguez’s testimony would have corroborated Sanchez’s testimony that Knellinger was a large-scale cocaine dealer. Again, because this fact was known to the jury and not disputed, Rodriguez’s testimony would not have affected the jury’s verdict. Indeed, both Sanchez and the defendant acknowledged at trial that Knellinger was a drug dealer and that Knellinger set up this particular transaction. The Rodriguez reports are not, therefore, material.

Zimmerman further claims that Rodriguez’s statement that Sanchez told him not to talk to the government could have been used to impeach Sanchez by suggesting that Sanchez chose to

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<sup>2</sup>In any event, I also find that the Rodriguez reports are not exculpatory. They describe a separate drug transaction involving Julio LNU, Rodriguez, and Knellinger. There is nothing in them concerning an attempt to entrap the defendant. Rodriguez was not involved in any way in the transaction at issue in this trial. Moreover, Julio LNU, Rodriguez, and Knellinger were not called as witnesses at trial by either side.



follow his own advice and therefore, did not testify as to the whole story. Even assuming that the jury would have made this same inference, such information is cumulative to the impeachment material already in evidence, such as, Sanchez's lies to police officers at the time of his arrest, Sanchez's entering into a cooperation plea agreement with the hopes of obtaining leniency in exchange for his cooperation, and Sanchez's own large-scale drug dealing for which he hoped not to be prosecuted. Moreover, there was also evidence presented at trial which corroborated Sanchez's testimony, such as tape-recorded conversations including Zimmerman's admissions, DEA surveillance, and Zimmerman's own testimony. Accordingly, the information contained in the two Rodriguez reports is not material under *Brady*.

Therefore, even if the information contained in the two Rodriguez reports is considered exculpatory, because it is not material under *Brady* I conclude that there has been no violation of that doctrine.<sup>3</sup> Accordingly, the defendant's motion for a new trial will be denied.

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<sup>3</sup>There also can be no violation of *Brady* where the defense was otherwise made aware of the information contained in the Rodriguez reports before trial. Here, the information concerning Knellinger's involvement was documented in the Sanchez DEA report that was produced to the defendant before trial. Indeed, the Sanchez report is much more detailed than anything contained in the Rodriguez reports.

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**ORDER**

YOHN, J. June , 2001

AND NOW, this            day of June, 2001, upon consideration of defendant's motion for a new trial (Doc. No. 142) and the government's response thereto (Doc. No. 155), IT IS  
HEREBY ORDERED that the motion is DENIED.

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William H. Yohn, Jr., Judge